

NEW JERSEY REAL ESTATE COMMISSION

NEW JERSEY REAL)	DOCKET NUMBER: SOM-19-016
ESTATE COMMISSION,)	
)	(REC Ref. Nos. 1228133, 1328311)
Complainant)	
)	
)	ORDER TO SHOW CAUSE
vs.)	
)	
AVIS GARDELL, licensed New Jersey real)	
estate broker, (RB0016142), broker of)	
record of AVIS REALTY LLC, licensed)	
New Jersey real estate broker (PA0568663),)	
and formerly licensed real estate Instructor)	
and real estate school Director, and PAMELA)	
NOUMAIR, formerly licensed New Jersey)	
real estate salesperson, (SP0788733),)	
)	
Respondents)	

THIS MATTER being commenced by the New Jersey Real Estate Commission in the Department of Banking and Insurance, State of New Jersey on its own motion pursuant to the provisions of N.J.S.A. 45:15-17, 45:15-17.1, 45:15-18 and N.J.A.C. 11:5-1.1, and it appearing that:

1. Avis Gardell ("Respondent Gardell") is a licensed New Jersey real estate broker and is broker of record of Avis Realty LLC, licensed New Jersey real estate broker currently located at 1 Shadowbrook Lane, Basking Ridge, N.J. 07920. Gardell was previously a licensed New Jersey real estate instructor and was Director of Mercer County Community College Center for Continuing Education. Her instructor license expired on February 28, 2019 and has not been renewed. She is no longer Director of Mercer County Community College Center for Continuing Education; and

2. Pamela Noumair ("Respondent Noumair") is a formerly licensed New Jersey real estate salesperson. Her license became inactive on February 12, 2019 and has not been renewed. At all times relevant hereto, Respondent Noumair was a salesperson licensed with Avis Realty, LLC; and

COUNT ONE

3. On October 10, 2012 and on several other occasions from October 2012 to February 2014, a Real Estate Commission investigator attempted to visit the office of Avis Realty, LLC located at 8 School Road, East, Manalapan, N.J. which was the address on file with the Commission. On each occasion, the office was found to be unoccupied and locked; and

4. Respondent Gardell admitted to a Real Estate Commission investigator that she had closed the office on or about January 28, 2012. She admitted that she did not file an office closing affidavit or a change of address with the Real Estate Commission; and

5. On or about July 29, 2014 a change of address for Avis Realty was made with the Real Estate Commission noting the new address as 1 Shadowbrook Lane, Basking Ridge N.J. 07920; and

6. Respondent Gardell violated N.J.S.A. 45:15-12 in that she failed to maintain a designated main office open to the public between January 28, 2012 and July 29, 2014; and

COUNT TWO

7. In the course of the Real Estate Commission investigation, Respondent Gardell also admitted to an investigator that she had conducted real estate business out of her home which was an unlicensed location from January 28, 2012 until July 29, 2014.

Said conduct is a violation of N.J.S.A. 45:15-1 and 45:15-3, conducting business as a real estate broker without a license; and

COUNT THREE

8. A review of the licensing records of the New Jersey Real Estate Commission shows that the license of Avis Realty, LLC was not renewed in a timely manner and remained inactive between July 1, 2015 and November 30, 2015. Respondent admitted that she had conducted two real estate transactions during that unlicensed period. She acted as a real estate broker for the sale of the properties at 30 Parker Road, Long Valley, N.J. and 128 Driftway Road, Howell, N.J. Said activity is a violation of N.J.S.A. 45:15-1 and 45:15-3, unlicensed activity; and

COUNT FOUR

9. As part of the Real Estate Commission investigation, a subpoena to appear and produce records was personally served upon Respondent Gardell at her residence on January 31, 2013. That subpoena directed Gardell to appear at the Real Estate Commission on February 14, 2013 and to bring specific documents and transaction records with her. Gardell appeared as required by the subpoena but failed to produce any of the documents required in the subpoena, in violation of N.J.S.A. 45:15-17(e), conduct demonstrating unworthiness; and

COUNT FIVE

10. On or about August 13, 2012, Gianna Marano entered into a contract to purchase the property at 5 Gorgino Drive, Toms River, N.J. Ms. Marano was represented by Avis Realty, LLC in the transaction. Respondent Noumair and Avis Realty, LLC were acting as buyer agents in the transaction. Ms. Marano tendered to Respondent Noumair her

check #249 in the amount of \$1,000 dated August 13, 2012 made payable to Avis Realty, LLC as the initial deposit on the transaction. The transaction did not proceed to closing, and Ms. Marano's attorney requested that the deposit be returned to her. Respondent Gardell presented check #1317 dated September 28, 2012 drawn on the operating account of Avis Realty, LLC in the amount of \$1,000 payable to Ms. Marano. Said check was returned for insufficient funds. When the check was re-presented, it was honored and Ms. Marano has been made whole; and

11. In the course of investigating Ms. Marano's complaint, a review of her deposit check and of the bank records of Avis Realty, LLC revealed that the date on Ms. Marano's check had been altered to reflect the date of August 18, 2012. Respondent Gardell admitted that she had instructed her agent, Respondent Noumair to make the change so as to appear to be in compliance with N.J.A.C. 11:5-1(c), requiring deposit monies to be deposited into an escrow account within five business days. The Marano check was actually deposited on August 22, 2012; and

12. The Respondent Gardell is in violation of N.J.A.C. 11:5-1(c) for failing to promptly deposit the Marano check into an escrow account; and

13. Respondent Gardell is in violation of N.J.S.A. 45:15-17(e), unworthiness, incompetency, bad faith or dishonesty by facilitating the change of the date on the Marano check so as to circumvent the requirements set forth above; and

14. Respondent Noumair is in violation of N.J.S.A. 45:15-17(e), unworthiness, incompetency, bad faith or dishonesty by changing the date on the Marano check so as to circumvent the requirements set forth above; and

COUNT SIX

15. A review of the bank statements for Avis Realty, LLC escrow account maintained at Bank of America for January 2012 through December 2012 revealed that there were negative balances in the account for nine of the twelve months in 2012. The operating account maintained by Avis Realty, LLC was also overdrawn for three of the twelve months in 2012, manifesting an inability to cover escrow shortages from agency funds; and

16. On August 1, 2012, the balance in the escrow account was -\$10.00. After the Marano check was deposited on August 22, 2012, the balance was \$990.00. The escrow account was overdrawn the entire month of September, 2012. When check #1317 dated September 28, 2012 was issued by Respondent Gardell for the refund of deposit monies to Ms. Marano out of the operating account, that account was also overdrawn; and

17. The conduct of Respondent Gardell is in violation of N.J.S.A. 45:15-17(o) and N.J.A.C. 11:5-5.1(a) and (c) in that she commingled the money of her principals with her own, and failed to maintain in a special account, separate and apart from personal or other business accounts, all monies received by the Respondent Gardell acting in the capacity of a real estate broker or as escrow agent or the temporary custodian of the funds of others in a real estate transaction; and

18. The conduct of Respondent Gardell is in violation of N.J.A.C. 11:5-6.4(a) in that by the actions set forth above, she failed to protect and promote the interests of her principal; and

COUNT SEVEN

19. In the course of the investigation into the Marano complaint, Respondent Gardell was unable to produce ledgers for the escrow account of Avis Realty, LLC.

Respondent Gardell admitted to a Commission investigator that she did not maintain either a general ledger or individual transaction ledgers. She further stated that she had never reconciled the escrow account and in fact did not know how to reconcile the account; and

20. In interviews conducted by Real Estate Commission investigators with Respondent Gardell in 2016 at her office, Respondent Gardell was not able to produce records for inspection and audit. However, she indicated that as of 2013 her office policy was that no escrow monies were held by Avis Realty, LLC. Respondent Gardell also disclosed that she had previously opened additional escrow accounts at Wells Fargo which were not reported to the Real Estate Commission; and

21. Respondent Gardell's conduct is in violation of N.J.A.C. 11:5-5.4 in that she failed to maintain business records required by that regulation including trust account ledgers, and records evidencing reconciliation of the escrow account; and

22. Respondent Gardell is in violation of N.J.A.C. 11:5-5.5 in that she failed to make the business records of Avis Realty, LLC available for inspection by investigators; and

23. Respondent Gardell is in violation of N.J.A.C. 11:5-5.1(b) in that she failed to notify the Real Estate Commission when she opened additional escrow accounts;

COUNT EIGHT

24. Edward Noumair is a formerly licensed New Jersey real estate salesperson. His real estate license became inactive on or about January 20, 2009. He had been employed with Avis Realty, LLC. On or about June 20, 2011, Edward Noumair tendered his check #527 in the amount of \$100.00 to Respondent Gardell for the renewal of his real estate license. The check was deposited into the operating account of Avis Realty, LLC on or about June 21, 2011. Respondent Gardell failed to submit the fee to the Real

Estate Commission for the renewal of Mr. Noumair's license, causing said license to lapse. Noumair had to re-qualify for a salesperson's license by again completing the education and examination requirements; and

25. Respondent Gardell is in violation of N.J.S.A. 45:15-17(e) unworthiness, incompetency, bad faith or dishonesty by accepting a license renewal fee from Edward Noumair and then failing to renew the license;

And for good cause shown,

IT IS ON THIS ^{4th} 28 DAY OF August, 2019

ORDERED that Respondent Avis Gardell shall show cause why Respondent's real estate broker's license and/or eligibility to hold any real estate including an instructor's or school director's license should not be suspended or revoked and/or why fines or other sanctions should not be imposed pursuant to N.J.S.A. 45:15-17 and N.J.A.C. 11:5-1.1. Respondent Pamela Noumair shall show cause why her eligibility to hold any real estate license should not be suspended or revoked and/or why fines or other sanctions should not be imposed. Respondents shall file written Answers to the charges in this Order to Show Cause as required by N.J.A.C. 11:5-11.2 within twenty (20) days of the service of this Order. As required by N.J.A.C. 11:5-11.2, Respondents' written Answers must include specific admissions or denials of all allegations in the Order to Show Cause, state the factual basis of each and every factual allegation denied and assert any defenses that Respondents intend to present if this matter is deemed a contested case and a plenary hearing is held; and

IT IS FURTHER ORDERED that failure to comply with all the requirements of N.J.A.C. 11:5-11.2 may result in a determination that there are no material facts or issues


of law in dispute and any presentation made to the Commission will be limited to the issue of the severity of any sanction or penalty to be imposed; and

IT IS FURTHER ORDERED that the New Jersey Real Estate Commission will review this Order to Show Cause and Answer filed, if any, at a meeting scheduled on or after the 8th day of October, 2019 at 9:30 a.m. to determine whether there is a material fact or issue of law contested. No appearance is required at that time; and

IT IS FURTHER ORDERED that if the Commission determines that there is a material fact or issue of law contested, a hearing will be scheduled for a future date; and

IT IS FURTHER ORDERED that if the Commission determines that there is no material fact or issue of law contested, a hearing shall be scheduled at which the Respondents will be limited to presenting witnesses and documentary evidence regarding the issue of the severity of any sanction or penalty to be imposed; and

IT IS FURTHER ORDERED that a copy of this Order be served upon the Respondents as provided in N.J.S.A. 45:15-18, which service may be accomplished by serving a copy of this Order on the Respondents personally, or by delivering a copy hereof to their last known business addresses via certified mail.



Marlene Caride
Commissioner
New Jersey Department of Banking and Insurance

mag Gardell OTSC/rec enforcement